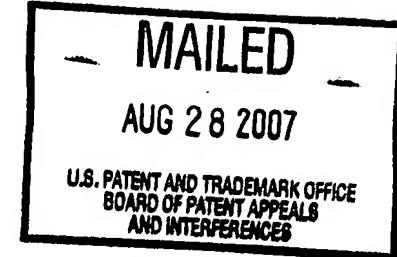


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte: MARK J. HARRIS

Application No. 10/018,378



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on August 22, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

**APPEAL BRIEF**

**Summary Of Claimed Subject Matter**

Appellant filed an Appeal Brief dated March 28, 2005, in response to the Final Rejection mailed July 27, 2004. The Appeal Brief is not in compliance with the new rules of 37 CFR 41.37(c) effective September 13, 2004.

37 CFR 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

\* \* \*

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief . The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

Section 37 CFR 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

**CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

- 1) hold the Appeal Brief filed March 28, 2005, defective;
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief, Summary of Claimed Subject Matter;
- 3) issue and mail a PTOL-90, to acknowledge and consider any "paper" filed by appellant correcting the Appeal Brief, Summary of Claimed Subject Matter; and
- 4) for any further action as deemed appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

  
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PJN/dpv

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